REMARKS

In the Office Action dated April 27, 2005, claims 6-10 and 21-22 are pending and under examination. The Examiner has objected to the priority claim of the present application. The Examiner has also rejected claims 6-10 and 21-22 under 35 U.S.C. §112, first paragraph for allegedly containing subject matter not described in the specification as originally filed. Further, the Examiner has rejected claims 6-10 and 21-22 under 35 U.S.C. §102(b) as allegedly anticipated by AN: Q92843 (GenBank), and by AN: P70345 (GenBank), respectively. Moreover, the Examiner has rejected claims 6-10 and 21-22 under 35 U.S.C. §102(e) as allegedly anticipated by U.S. Patent 6,812,339.

This Response addresses each of the Examiner's objections and rejections. Applicants therefore respectfully submit that the present application is in condition for allowance. Favorable consideration of all pending claims is therefore respectfully requested.

In the Action, the Examiner alleges that the Amendment filed on May 6, 2004, which modified the amino acid sequences of SEQ ID NO: 7 and SEQ ID NO: 9, is not supported by the specification or the priority documents, U.S. Serial No. 09/155,327 (the parent application) and Australian Provisional Application PN8965 (filed on March 27, 1996). In particular, the Examiner alleges that Applicants did not identify where the support for the intended corrections of SEQ ID NO: 7 and SEQ ID NO: 9 is found in the specification. In addition, the Examiner observes that according to the specification, SEQ ID NOS: 7 and 9 are encoded by SEQ ID NOS: 6 and 8, respectively. The Examiner indicates that the current sequences of SEQ ID NOS: 7 and 9 are inconsistent with the amino acid sequences that would be encoded by SEQ ID NOS: 6 and 8, respectively. The Examiner concludes that with respect to SEQ ID NO: 7 and SEQ ID NO: 9, Applicants are not entitled to the benefit of an earlier filing date under 35 U.S.C. §119 and §120,

and are only entitled to May 6, 2004, the date on which the current versions of SEQ ID NO: 7 and 9 were filed. For the same reason, the Examiner has rejected claims 6-10 and 21-22 under 35 U.S.C. §112, first paragraph for allegedly containing subject matter (SEQ ID NOS: 7 and 9) not described in the specification as filed.

In response, Applicants respectfully submit that the current versions of SEQ ID NO: 7 and SEQ ID NO: 9 were presented to the Examiner in the Preliminary Amendment dated August 9, 2001. In that Preliminary Amendment, Applicants provided a substitute Sequence Listing and explained that Applicants corrected certain clerical errors in SEQ ID NOS: 6, 7, 8 and 9. Applicants also identified support in the present specification and in the priority document PN8965 for the corrected sequences. However, in the Office Action dated November 3, 2003, the Examiner objected to the corrections in SEQ ID NOS: 6 and 8, and required Applicants to withdraw the changes made to SEQ ID NOS: 6 and 8. In that same Office Action, the Examiner did not object to or comment on the corrections made to SEQ ID NO: 7 or SEQ ID NO: 9. In the response filed May 6, 2004, Applicants withdrew the changes previously made to SEQ ID NOS: 6 and 8. It was Applicants' understanding that the corrections to SEQ ID NOS: 7 and 9, which were presented in the Preliminary Amendment dated August 9, 2001, were accepted by the Examiner. Therefore, contrary to the Examiner's contention, Applicants did not introduce any further modification to SEQ ID NO: 7 or SEQ ID NO: 9 in the Amendment dated May 6, 2004.

With respect to the basis for the corrected SEQ ID NOS: 7 and 9, Applicants identified the relevant support in the present specification by way of the Preliminary Amendment filed on August 9, 2001. That is, the correct versions of SEQ ID NOS: 7 and 9 are disclosed in Figure 1 and Figure 8 as originally filed in the present application and in the parent case (U.S. Serial No. 09/155,327), as well as in the priority documents, PCT/AU97/00199 and PN8965.

As a courtesy to the Examiner, Applicants provide herewith side-by-side comparisons of SEQ ID NOS: 7 and 9 with Figures 1 and 8, respectively. Specifically, Applicants provide herewith a copy of newly formatted Figure 1 (**Exhibit A**), wherein the sheets Figure 1(i) and Figure 1(ii), as originally filed in the present application on August 9, 2001, are joined at the match line to become one sheet for convenience of comparison. It is respectfully submitted that the content of Figures 1(i)-(ii) is identical with that of Figures 1(i)-(ii) filed in the parent application, with that of Figures 1(i)-(ii) filed in PCT/AU97/00199, and with that of Figure 1 in the priority document PN8965. A side-by-side comparison is provided herewith (**Exhibit B**) to illustrate the identity of the bcl-w sequence in Figure 1 with the current sequence of SEQ ID NO: 9 of record.

Similarly, Applicants provide herewith a copy of newly formatted Figure 8 (**Exhibit C**), wherein the sheets Figure 8(i) through Figure 8(iv), as originally filed in the present application on August 9, 2001, are joined at the match lines to become one sheet for convenience of comparison. It is respectfully submitted that the content of Figures 8(i)-(iv) is identical with that of Figures 8(i)-(iv) filed in the parent application, with that of Figures 8(i)-(iv) filed in PCT/AU97/00199, and with that of Figure 8 in the priority document PN8965. A side-by-side comparison is provided herewith in **Exhibit D** to illustrate the identity of the bcl-w sequence in Figure 8 with the current sequence of SEQ ID NO: 7 of record.

Therefore, Applicants respectfully submit that the current sequences of SEQ ID NO: 7 and SEQ ID NO: 9 are fully supported by the present application filed on August 9, 2001, by the parent application, and by PCT/AU97/00199 and the priority document PN8965. Applicants are therefore entitled to the priority date of PN8965 (i.e., March 27, 1996).

As to the inconsistencies between the codons in SEQ ID NOS: 6 and 8, and the amino acid sequences of SEQ ID NOS: 7 and 9, Applicants respectfully submit that in light of the instant disclosure including Figures 1 and 8, and the disclosure of PCT/AU97/00199 and PN8965, those skilled in the art would recognize that the inconsistencies are results of clerical errors in preparing the Sequence Listing.

In view of the foregoing, it is respectfully submitted that the Examiner's objection to the priority claim of the present application and the rejection of claims 6-10 and 21-22 under 35 U.S.C. §112, first paragraph, are overcome. Withdrawal of the objection and the rejection is therefore respectfully requested.

Claims 6-10 and 21-22 are further rejected under 35 U.S.C. §102(b) as allegedly anticipated by AN: Q92843 (human BCLW, the record of which was created in GenBank on November 1, 1997), and by AN: P70345 (mouse BCLW, the record of which was created in GenBank on November 1, 1997). Claims 6-10 and 21-22 are also rejected under 35 U.S.C. §102(e) as allegedly anticipated by U.S. Patent 6,812,339 (first filed on September 8, 2000, issued on November 2, 2004).

Apparently, the Examiner has raised these rejections on the basis that the sequences of SEQ ID NOS: 7 and 9 are only entitled to the priority date of May 6, 2004. As submitted above, Applicants have established that SEQ ID NOS: 7 and 9 are entitled to the priority date of March 27, 1996. Therefore, the cited references are not prior art relative to the claimed invention. Withdrawal of the rejections under 35 U.S.C. §102(b) and 102(e) is therefore respectfully requested.

In view of the foregoing, it is firmly believed that the subject application is in condition for allowance, which action is earnestly solicited.

Respectfully submitted,

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Encs.: Exhibits A-D

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                    A          S1
Bclw        MATPASTFDT RALVADFVGY | KLRQKGYVCG AGPGEGPAAD PLHQAMRAAG   50
Bclw-Rox    MATPASTFDT RALVADFVGY | KLRQKGYVCG AGPGEGPAAD PLHQAMRAAG   50

                                                    S2
Bclw        DEFETRFRRT FSDLAAQLHV | TPGSAQQRFT QVSDELFQGG PNWGRLVAFF   100
Bclw-Rox    DEFETRFRRT FSDLAAQLHV | TPGSAQQRFT QVSDELFQGG PNWGRLVAFF   100

                                E                   S3
Bclw        VFGAALCAES VNKEMEPLVG | QVQDWMVAYL ETRLADWIHS SGGWAEFTAL   150
Bclw-Rox    VFGAALCAES VNKEMEPLVG | QVQDWMVAYL ETRLADWIHS SGGWELEAIK   150
                                                                 ▲

Bclw        YGDGALEEAR RLREGNWASV | RTVLTGAVAL GALVTVGAFF ASK*          193
Bclw-Rox    ARVREMEEEA EKLKELQNEV | EKQMNMSPPP GNAGPVIMSL EEKMEADARS   200

Bclw-Rox    IYVGNVDYGA TAEELEAHFH | GCGSVNRVTI LCDKFSGHPK GFAYIEFSDK   250

Bclw-Rox    ESVRTSLALD ESLFRGRQIK | VIPKRTNRPG ISTTDRGFPR SRYRARTTNY   300

Bclw-Rox    NSSRSRFYSG FNSRPRGRIY | RGRARATSWY SPY*                    333
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Fig. 1 (i)

Fig. 1 (ii)

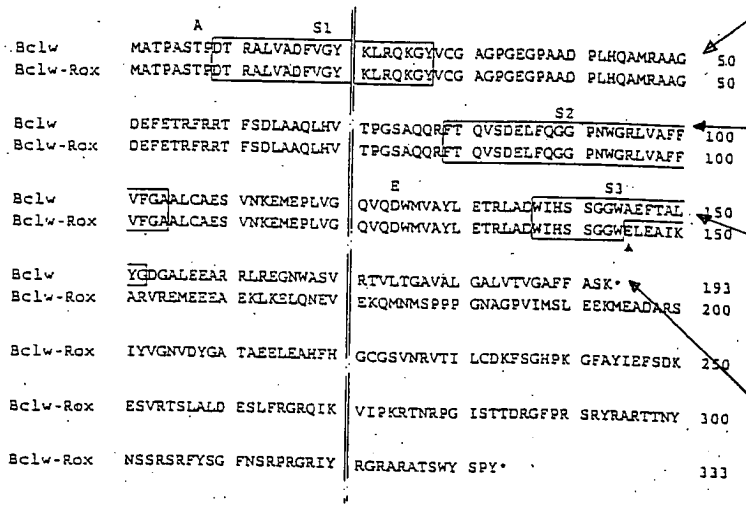

Fig. 1 (i)

<400> 9

Met Ala Thr Pro Ala Ser Thr Pro Asp Thr Arg Ala Leu Val Ala Asp
1 5 10 15
Phe Val Gly Tyr Lys Leu Arg Gln Lys Gly Tyr Val Cys Gly Ala Gly
20 25 30
Pro Gly Glu Gly Pro Ala Ala Asp Pro Leu His Gln Ala Met Arg Ala
35 40 45
Ala Gly
50

Asp Glu Phe Glu Thr Arg Phe Arg Arg Thr Phe Ser Asp Leu
55 60
Ala Ala Gln Leu His Val Thr Pro Gly Ser Ala Gln Gln Arg Phe Thr
65 70 75 80
Gln Val Ser Asp Glu Leu Phe Gln Gly Gly Pro Asn Trp Gly Arg Leu
85 90 95
Val Ala Phe Phe
100

Val Phe Gly Ala Ala Leu Cys Ala Glu Ser Val Asn
105 110
Lys Glu Met Glu Pro Leu Val Gly Gln Val Gln Asp Trp Met Val Ala
115 120 125
Tyr Leu Glu Thr Arg Leu Ala Asp Trp Ile His Ser Ser Gly Gly Trp
130 135 140
Ala Glu Phe Thr Ala Leu
145 150

Tyr Gly Asp Gly Ala Leu Glu Glu Ala Arg
155 160
Arg Leu Arg Glu Gly Asn Trp Ala Ser Val Arg Thr Val Leu Thr Gly
165 170 175
Ala Val Ala Leu Gly Ala Leu Val Thr Val Gly Ala Phe Phe Ala Ser
180 185 190
Lys

Fig. 1 (ii)

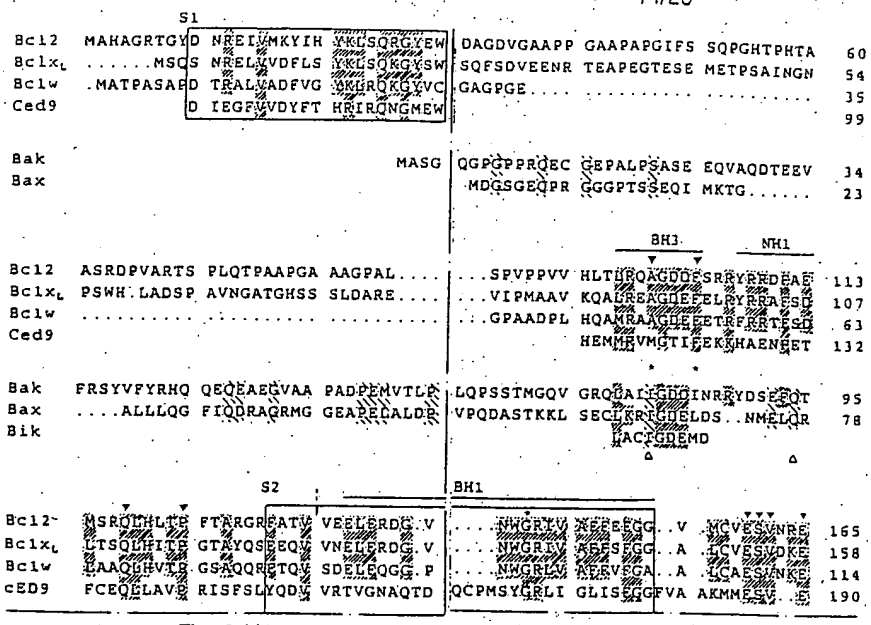

Fig. 8 (i)

Fig. 8 (ii)

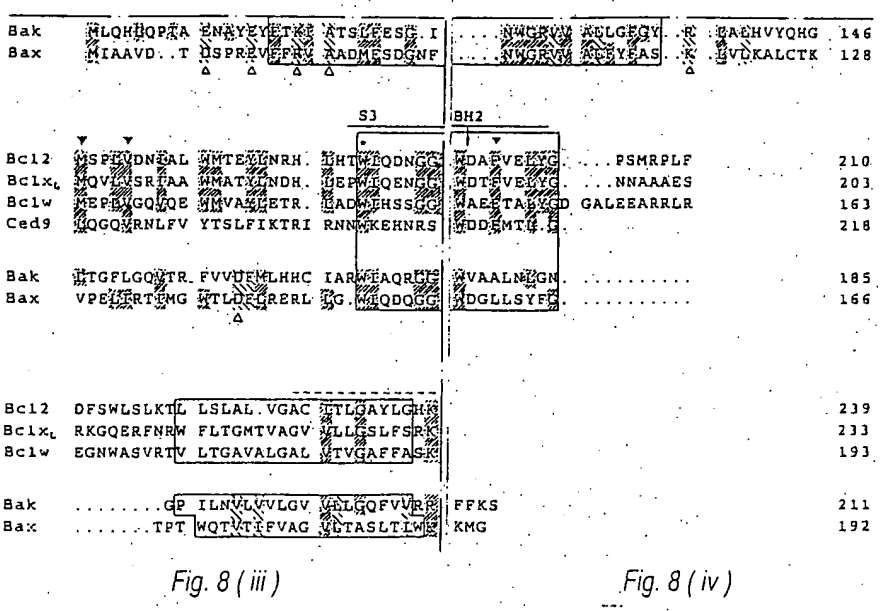

Fig. 8 (iii)

Fig. 8 (iv)

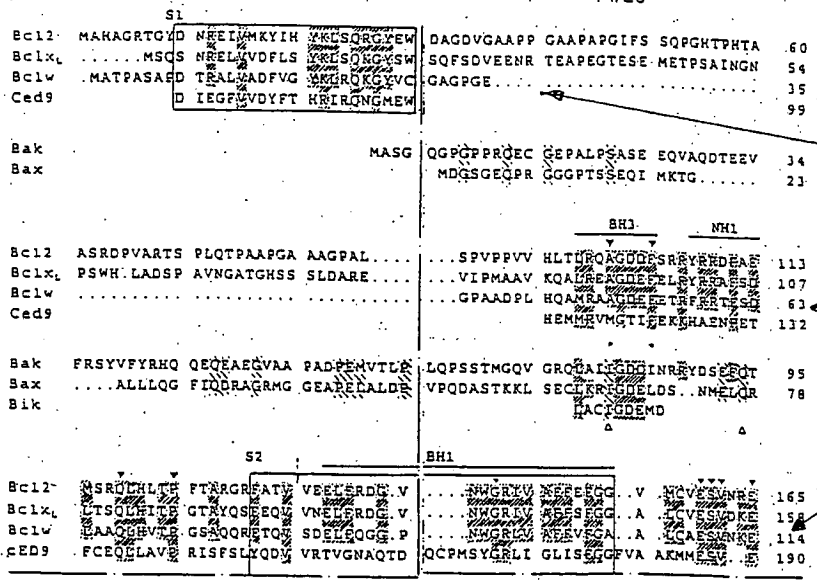

Fig. 8 (i)

Fig. 8 (ii)

<400> 7

Met Ala Thr Pro Ala Ser Ala Pro Asp Thr Arg Ala Leu Val Ala Asp
1 5 10 15
Phe Val Gly Tyr Lys Leu Arg Gln Lys Gly Tyr Val Cys Gly Ala Gly
20 25 30
Pro Gly Glu
35

Gly Pro Ala Ala Asp Pro Leu His Gln Ala Met Arg Ala
40 45
Ala Gly Asp Glu Phe Glu Thr Arg Phe Arg Arg Thr Phe Ser Asp
50 55 60

Leu
Ala Ala Gln Leu His Val Thr Pro Gly Ser Ala Gln Gln Arg Phe Thr
65 70 75 80
Gln Val Ser Asp Glu Leu Phe Gln Gly Gly Pro Asn Trp Gly Arg Leu
85 90 95
Val Ala Phe Phe Val Phe Gly Ala Ala Leu Cys Ala Glu Ser Val Asn
100 105 110
Lys Glu

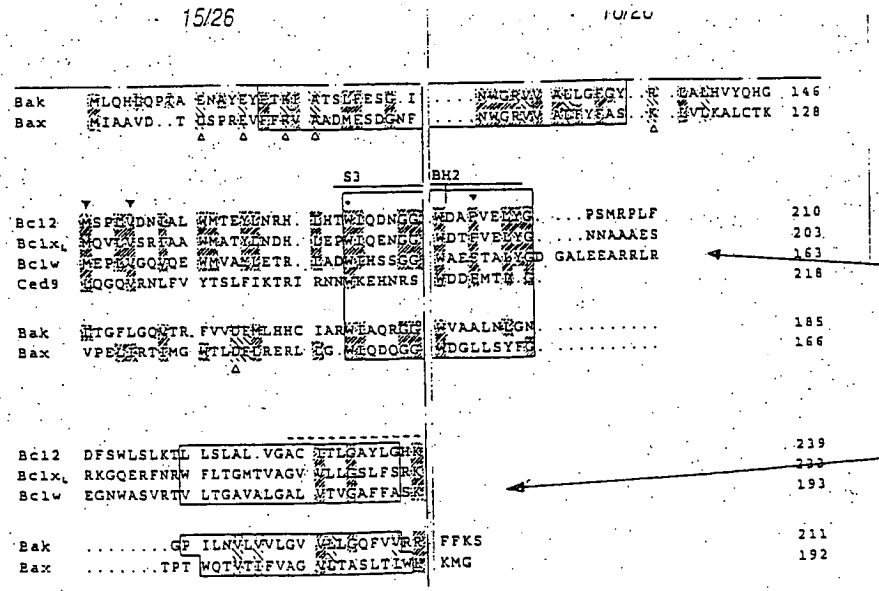

Fig. 8 (iii)

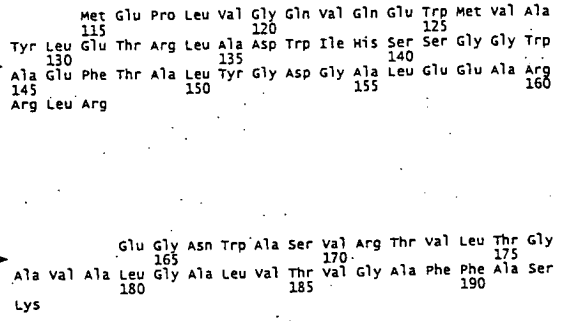

Fig. 8 (iv)